

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

COREY TYLER BALDRIDGE,

Defendant-Appellant.

UNPUBLISHED

June 15, 2001

No. 223714

Kent Circuit Court

LC No. 99-003854-FC

Before: Neff, P.J., and Doctoroff and Wilder, JJ.

PER CURIAM.

Defendant was convicted by a jury of three counts of first-degree criminal sexual conduct (CSC I), MCL 750.520b(1)(f). He was sentenced to twelve to forty years' imprisonment for each conviction, the terms to run concurrently with each other. He appeals as of right. We affirm.

This case involves a sexual assault that occurred at a party of teenagers. At trial, when the victim was called to the stand, she was not in the hall outside the courtroom. Upon realizing this, an officer¹ stated, in the presence of the jury, that the victim had an upset stomach and went to get something for it. After the judge excused the jury, defendant objected stating that it was an attempt to draw sympathy from the jury. The court noted the objection for the record. There is nothing in the record to suggest that this innocuous statement was intended to evoke sympathy for the victim or prejudice defendant. The court officer merely offered an explanation for the victim's absence from the courtroom.

Defendant argues on appeal that the trial court refused to issue a cautionary jury instruction on the officer's comment, and therefore, defendant was denied a fair trial. Contrary to defendant's argument, the trial court did not "refuse" to give a cautionary jury instruction on the officer's comment. Defendant did not request one. In *People v Shepherd*, 63 Mich App 316,

¹ The transcript refers only to "Officer" as the speaker. In defense counsel's objection, the speaker is referred to as a "detective" and in defendant's brief on appeal the speaker is referred to as the "lead detective." The exact speaker is unknown.

321; 234 NW2d 502 (1975), this Court stated that the general rule is that “the trial judge is not required to give limiting or cautionary instructions absent a request or a proper objection.” In *Shepherd*, this Court held that “[s]ince defendant did not request the cautionary instruction which he now contends should have been given, nor object to the instructions as given, the trial judge did not err by not giving that instruction.” *Id.*

Although defendant objected to the officer’s comment, he did not request a cautionary jury instruction. Also, at no point did defendant object to the jury instructions. See *People v Lee*, 243 Mich App 163, 183; 622 NW2d 71 (2000). There was no error in not giving an instruction on the officer’s comment.

In *People v Smith*, 243 Mich App 657, 690-691; 625 NW2d 46 (2000), this Court held that the “[d]efendant has failed to provide any authority or argument demonstrating that the trial court had a duty to issue this sort of additional limiting instruction during the trial without a specific request.” Similarly, in this case, defendant failed to produce any authority or argument that the trial court had a duty to give a limiting instruction without a request. In addition, included in the standard jury instructions given was an instruction that the jurors should not let their sympathies influence their decision. As a result, the instruction protected defendant’s rights. Therefore, there was no plain error that affected defendant’s substantial rights. See *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

We affirm.

/s/ Janet T. Neff
/s/ Martin M. Doctoroff
/s/ Kurtis T. Wilder